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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**JOHN MOGANNAM,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

PLAINTIFFS,

V.

**USCB, INC. a/k/a USCB
America,**

DEFENDANT.

Case No.: _____

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C §
227 ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. JOHN MOGANNAM (“Plaintiff”); brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of USCB, INC aka USCB America. (“USCB” or Defendant) and its related entities, subsidiaries and agents in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephones, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiffs. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy

invasion.

Id. at § 12; *see also*, *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call...” *Id.* at §§ 12-13. *See also*, *Mims*, 132 S. Ct. at 744.

5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

6. The Ninth Circuit recently affirmed certification of a TCPA class action similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, ___ F.3d ___, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

8. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b) because the events giving rise

1 to Plaintiffs' causes of action against Defendant occurred within the State of
2 California and Defendant conducts business in the County of Los Angeles.

3 **PARTIES**

4 9. Plaintiff is, and at all times mentioned herein was, an individual citizen and
5 residents of the State of California.

6 10. Plaintiff is informed and believes, and thereon alleges, that USCB is, and at
7 all times mentioned herein was, a corporation whose primary corporate
8 address is 3333 Wilshire, Blvd, Ste. 720, Los Angeles, CA 90010. USCB is,
9 and at all times mentioned herein was, a corporation and a "person," as
10 defined by 47 U.S.C. § 153 (39).

11 11. Defendant is a privately held receivable and recourse management company
12 that provides business processing and revenue cycle management solutions.

13 12. Plaintiff is informed and believes, and thereon alleges, that at all times
14 relevant Defendant conducted business in the State of California and in the
15 County of Los Angeles.

16 **FACTUAL ALLEGATIONS**

17 13. On or about March of 2013, Plaintiff received numerous telephone calls on
18 his cellular telephone from Defendant where Defendant used an automatic
19 telephone dialing system ("ATDS") as defined by 47 U.S.C. § 227(a)(1),
20 using an "artificial or prerecorded voice" as prohibited by 47 U.S.C. §
21 227(b)(1)(A).

22 14. The calls from Defendant came from phone numbers including but not
23 limited to 800-935-0591.

24 15. When Plaintiff first began to receive the calls from Defendant, the
25 prerecorded message stated that Defendant was attempting to reach a person
26 unknown to Plaintiff.

27 16. After several calls from defendant, Plaintiff was able to get through to a
28 representative and inform Defendant that his phone number was not

1 affiliated with the other person, and that Defendant should stop calling
2 Plaintiff.

3 17. Despite Plaintiff's explanation to Defendant that the cellular telephone
4 number belonged to him, and that Defendant was not to call it, Defendant
5 continued to call Plaintiff using an "ATDS" and "artificial or prerecorded
6 voice."

7 18. The ATDS used by Defendant has the capacity to store or produce telephone
8 numbers to be called, using a random or sequential number generator.

9 19. The telephone numbers Defendant called were assigned to a cellular
10 telephone service for which Plaintiff incurs a charge for incoming calls
11 pursuant to 47 U.S.C. § 227 (b)(1).

12 20. Plaintiff did not provide express consent to Defendant to receive calls on
13 Plaintiff's cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

14 21. Plaintiff did not provide "prior express consent" to Defendant to place
15 telephone calls to Plaintiff's cellular telephone with an artificial or
16 prerecorded voice utilizing an ATDS as proscribed under 47 U.S.C. §
17 227(b)(1)(A).

18 22. These telephone calls by Defendant or its agents were in violation of 47
19 U.S.C. § 227(b)(1).

20 **CLASS ACTION ALLEGATIONS**

21 23. Plaintiff brings this action on behalf of himself and on behalf of all others
22 similarly situated ("the Class").

23 24. Plaintiff represents, and is a member of, the Class, consisting of:

24 All persons within the United States who received any
25 telephone call/s from Defendant or their agent/s and/or
26 employee/s to said person's cellular telephone made
27 through the use of any automatic telephone dialing
28 system or with an artificial or prerecorded voice within
the four years prior to the filing of the Complaint.

1 25. Defendant and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believe the
3 Class members number in the tens of thousands, if not more. Thus, this
4 matter should be certified as a Class action to assist in the expeditious
5 litigation of this matter.

6 26. Plaintiff and members of the Class were harmed by the acts of Defendant in
7 at least the following ways: Defendant illegally contacted Plaintiff and the
8 Class members via their cellular telephones thereby causing Plaintiff and the
9 Class members to incur certain cellular telephone charges or reduce cellular
10 telephone time for which Plaintiff and the Class members previously paid,
11 by having to retrieve or administer messages left by Defendant during those
12 illegal calls, and invading the privacy of said Plaintiff and the Class
13 members. Plaintiff and the Class members were damaged thereby.

14 27. This suit seeks only damages and injunctive relief for recovery of economic
15 injury on behalf of the Class and it expressly is not intended to request any
16 recovery for personal injury and claims related thereto. Plaintiff reserves the
17 right to expand the Class definition to seek recovery on behalf of additional
18 persons as warranted as facts are learned in further investigation and
19 discovery.

20 28. The joinder of the Class members is impractical and the disposition of their
21 claims in the Class action will provide substantial benefits both to the parties
22 and to the court. The Class can be identified through Defendant's records or
23 Defendant's agent's records.

24 29. There is a well-defined community of interest in the questions of law and
25 fact involved affecting the parties to be represented. The questions of law
26 and fact to the Class predominate over questions which may affect
27 individual Class members, including the following:
28

- 1 1. Whether, within the four years prior to the filing of the Complaint,
2 Defendant made any call/s (other than a call made for emergency
3 purposes or made with the prior express consent of the called party)
4 to Class members using any automatic telephone dialing system or
5 an artificial or prerecorded voice to any telephone number assigned
6 to a cellular telephone service.
- 7 2. Whether Plaintiff and the Class members were damaged thereby,
8 and the extent of damages for such violation; and
- 9 3. Whether Defendant should be enjoined from engaging in such
10 conduct in the future.

11 30. As a person that received numerous calls using an automatic telephone
12 dialing system or an artificial or prerecorded voice, without Plaintiff's prior
13 express consent, Plaintiff is asserting claims that are typical of the Class.
14 Plaintiff will fairly and adequately represent and protect the interests of the
15 Class in that Plaintiffs have no interests antagonistic to any member of the
16 Class.

17 31. Plaintiff and the members of the Class have all suffered irreparable harm as a
18 result of the Defendant's unlawful and wrongful conduct. Absent a class
19 action, the Class will continue to face the potential for irreparable harm. In
20 addition, these violations of law will be allowed to proceed without remedy
21 and Defendant will likely continue such illegal conduct. Because of the size
22 of the individual Class member's claims, few, if any, Class members could
23 afford to seek legal redress for the wrongs complained of herein.

24 32. Plaintiff has retained counsel experienced in handling class action claims and
25 claims involving violations of the Telephone Consumer Protection Act.

26 33. A class action is a superior method for the fair and efficient adjudication of
27 this controversy. Class-wide damages are essential to induce Defendant to
28 comply with federal and California law. The interest of Class members in

1 individually controlling the prosecution of separate claims against Defendant
2 is small because the maximum statutory damages in an individual action for
3 violation of privacy are minimal. Management of these claims is likely to
4 present significantly fewer difficulties than those presented in many class
5 claims.

- 6 34. Defendant has acted on grounds generally applicable to the Class, thereby
7 making appropriate final injunctive relief and corresponding declaratory
8 relief with respect to the Class as a whole.

9 **FIRST CAUSE OF ACTION**
10 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
11 **47 U.S.C. § 227 *ET SEQ.***

- 12 35. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

- 14 36. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

- 17 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*,
18 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- 20 38. Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**
23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
24 **TELEPHONE CONSUMER PROTECTION ACT**
25 **47 U.S.C. § 227 *ET SEQ.***

- 26 39. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.

- 28 40. The foregoing acts and omissions of Defendant constitute numerous and
multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. §
2 227 *et seq.*

3 41. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
4 227 *et seq.*, Plaintiffs and each of the Class are entitled to treble damages, as
5 provided by statute, up to \$1,500.00, for each and every violation, pursuant
6 to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 42. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff respectfully request the Court grant Plaintiff and The
11 Class members the following relief against GECRB:

12 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF 13 THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- 14 • As a result of Defendant's negligent violations of 47 U.S.C. §
15 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00
16 in statutory damages, for each and every violation, pursuant to 47
17 U.S.C. § 227(b)(3)(B).
- 18 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
19 such conduct in the future.
- 20 • Any other relief the Court may deem just and proper.

21 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION 22 OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- 23 • As a result of Defendant's willful and/or knowing violations of 47
24 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member
25 treble damages, as provided by statute, up to \$1,500.00 for each and
26 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
27 227(b)(3)(C).
- 28 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting
such conduct in the future.

- Any other relief the Court may deem just and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully submitted,

Date: March 13, 2014

HYDE & SWIGART

By: /s/ Joshua B. Swigart
Joshua B. Swigart
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